In the High Court of Judicature at Madras

Dated:12.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. MANIKUMAR

Habeas Corpus Petition No.684 of 2006

Arumugam .. Petitioner

vs.

1. State of Tamil Nadu
   rep. by its Secretary
   Prohibition and Excise Department,
   Chennai 600 009.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai-8.

3. The Inspector of Police,
   K-1, Sembium Police Station,
   Crime Branch, Perambur, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of writ of Habeas corpus calling for the records relating to the order passed by the 2nd Respondent in Memo No. 165/BDFGISV/2006 dated 30.06.2006 and quash the same and further direct the respondents to produce the body of the detenu viz., Sundhar now confined at Central Prison, Chennai before this Hon'ble Court and set him at liberty.

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For petitioner : Mr. S. Parthasarathy

For respondents : Mr. M. Babu Muthu Meeran
Addl. Public Prosecutor

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The petitioner by name Arumugam, who is the father of the detenu by name Sundhar, challenges the impugned order of detention dated 30.06.2006, detaining him as "Goonda" under Section 3 (1) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1981 (Tamil Nadu Act 14 of 1982).

2. Heard both sides.

3. At the foremost, the learned counsel for the petitioner submitted that there was delay in the disposal of the representation of the detenu dated 18.7.2006. The particulars furnished by the learned Additional Public Prosecutor show that on receipt of the said representation, remarks were called for by the Government on 19.7.2006, the said request was received by the Collectorate on 20.7.2006, para-war remarks were called for on 21.7.2006, para-war remarks were received from the sponsoring authority on 22.7.2006, the report was sent to the Government on 24.7.2006 and received by the Government on 25.7.2006, the file was dealt with by the Under Secretary and Deputy Secretary on 26.7.2006, finally the Minister for Prohibition and Excise passed orders on 27.7.2006 and rejection letter was prepared on 28.7.2006, sent to the detenu on 28.7.2006 and served on him on 29.7.2006. The above details clearly show that there was no undue delay on the part of the respondents as claimed by the learned counsel for the petitioner; accordingly, we reject the said submission.

4. The learned counsel for the petitioner next contended that the representation sent by the petitioner/father of the detenu was not considered by the Government. According to him, though in the said representation it is specifically stated that his son was suffering from mental illness on the relevant date, the same was not considered by the Government. It is also brought to our notice that the fact of the detenu being suffering from mental illness was stated in the bail petition filed before the concerned Court. According to the learned counsel, the failure to consider the said relevant aspect would go to the root of the matter and the order of detention is liable to be interfered with. We verified the undated representation sent by the petitioner, father of the detenu. It is true that at the end of the representation, a reference has been made about the mental illness of the detenu. It is equally true that in the bail application there is a reference to the mental illness of the detenu. We also verified the reply of the Government dated 28.7.2006. In the reply though there is no specific answer to the averment regarding the mental illness of the

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detenu, it is clear that the grievance expressed by the father of the detenu was duly considered by the Government. As far as the mental illness of the detenu on the relevant date, the learned Additional Public Prosecutor has brought to our notice the lengthy confession statement of the detenu recorded immediately after his arrest. The said confession statement is available at page Nos.125 to 130 of the paper book supplied to the detenu and we scrutinized the entire confession statement. It is also brought to our notice that on the basis of confession statement, stolen articles such as, gold chain, bangles and Nokia Cellphone were recovered from the detenu. It is pointed out that the value of those properties would come to three to four lakhs rupees. We also verified the remand order passed by the learned Magistrate and the statement recorded by him and we find that there is no specific complaint about his mental illness. Considering all the above particulars, we find that there is no acceptable material to show that at the relevant date and time the detenu was mentally affected; accordingly, we are unable to accept the said contention.

5. The learned counsel for the petitioner, by drawing our attention to 16th and 17th adverse cases, their crime numbers, time and date of each occurrence, submitted that in view of the discrepancies and in the absence of proper explanation by the person concerned, the detention order has to be quashed on the ground of non-application of mind on the part of the detaining authority. With regard to the said contention, we verified 16th and 17th adverse cases in the grounds of detention and also the connected documents/materials available in the paper book. It is true that there is an error in describing the date of occurrence in respect of each of the adverse cases, but, it is explained that both the cases were registered by K.1 Sembium Police Station in Crime Nos.816 and 817 of 2006. Even assuming that there is error in referring to the date, time and other particulars in respect of both the adverse cases, there are 18 cases booked against the detenu and the detention order was passed by the detaining authority mainly considering the ground case occurrence of which took place on 16.6.2006. It is not in dispute that required details/relevant materials relating to the ground case were duly placed before the detaining authority, copy of which was supplied to the detenu. In such circumstances, we are of the view that the error pointed out by the learned counsel for the petitioner in respect of 16th and 17th adverse cases has not prejudiced the detenu in any way and accordingly, we reject the said submission.

6. The learned counsel for the petitioner further contended that it is stated in the arrest card, which is available at page 165 of the paper book that the detenu was arrested on 16.6.2006, whereas in the arrest intimation which is available at page 168 of the paper book, it is mentioned that the detenu was arrested at 20 hours on 17.6.2006. A perusal of both the documents available at page Nos.165 and 168 of the paper book shows that the date of commission of offence was 16.6.2006 and the detenu was arrested at 20 hours on 16.6.2006 and he

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was brought to the police station on the same day and he was produced before the Court on 17.6.2006, which is clear from the remand requisition made by the Inspector of Police available at page No.169 of the paper book. If we consider all the factual details together, we are of the view that the detenu is in no way prejudiced; accordingly, we reject the above contention.

7. The learned counsel for the petitioner, by drawing our attention to para-4 of the grounds of detention, contended that the remand was extended periodically, but there was no awareness of all those details by the detaining authority. It is true that in paragraph-4 of the grounds of detention, the detaining authority has referred the fact that the detenu was on remand in crime No.818/2006 of K.1 Sembium Police Station, but he has not referred to the remand extension order. However, as rightly pointed out by the learned Additional Public Prosecutor, in the earlier paragraph, viz., para-3 the detaining authority has referred to the fact that the Inspector of Police during the course of investigation produced the detenu before the 5th Metropolitan Magistrate, Egmore, Chennai who lodged him in the Central Prison, Chennai as remand prisoner till 30.6.2006. All other details are available in the same paragraph of the grounds of detention; accordingly, we reject the above contention of the learned counsel for the petitioner.

8. The learned counsel for the petitioner further submitted that the document available at page 116 of the paper book supplied to the detenu is not readable and legible. We verified the said document and we find that it relates to 18th adverse case and as rightly pointed out by the learned Additional Public Prosecutor, the relevant particulars/details are readable. It is true that only certain portion of the document is not legible and readable, however, in view of the fact that the said document relates to one of the adverse cases and also taking note of the fact that the relevant particulars are readable and legible, we reject the said submission.

9. Except the above contentions, no other contention was urged by the learned counsel for the petitioner.

In the light of what is stated above, we do not find any valid ground for interference. Accordingly, the petition stands dismissed.
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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary
   State of Tamil Nadu
   Prohibition and Excise Department,
   Chennai 600 009.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai-8.

3. The Inspector of Police,
   K-1, Sembium Police Station,
   Crime Branch, Perambur, Chennai.

4. The Joint Secretary to Govt.,
   Public (Law and Order) Department,
   Fort Saint George, Chennai - 9.

5. The public Prosecutor, High Court,
   Madras

+ one cc to Mr. S. Parthasarathy, Advocate sr no. 42420

NG(CO)
NM(20.09.2006)

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